Supreme Court, U.S.
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No.

IN THE

# Supreme Court of the United States

CELEBRITY CRUISES, INC., ZENITH SHIPPING CORP., APOLLO SHIP CHANDLERS, INC., AND CELEBRITY CATERING SERVICES PARTNERSHIP,

*Petitioners,*

v.

JANE DOE,

*Respondent.*

**On Petition For A Writ Of Certiorari To The United States Court Of Appeals For The Eleventh Circuit**

## PETITION FOR A WRIT OF CERTIORARI

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## QUESTION PRESENTED

In *Kermarec v. Compagnie Generale Transatlantique*, 358 U.S. 625, 632 (1959), this Court held that "the owner of a ship in navigable waters owes to all who are on board for purposes not inimical to his legitimate interests the duty of exercising reasonable care under the circumstances of each case." Relying on two nineteenth century cases, however, the Eleventh Circuit held in the present case that cruise ship operators and other common carriers are strictly liable for intentional torts by their employees against passengers, even if such torts are committed by the employees while off duty and ashore. The Eleventh Circuit "agree[d] . . . that the age of the [earlier] decisions and the intervening decision in *Kermarec* suggest that the Supreme Court might well reconsider its former rulings were an opportunity to arise," but concluded that it was bound to follow its understanding of the earlier cases.

The question presented is whether cruise lines are strictly liable for assaults or other intentional torts committed by crew members against passengers—regardless of whether crew members are acting within the scope of their employment—or whether the liability of cruise lines for such torts should be decided instead under the "reasonable care under the circumstances" standard of *Kermarec*.

## PARTIES TO THE PROCEEDINGS

In addition to the parties named in the caption, the following individuals were defendants-appellants in the consolidated appeals below and are respondents in this Court: Baris Aydin and the M/V ZENITH (in rem).

## RULE 29.6 STATEMENT

Royal Caribbean Cruises, Ltd. is the parent corporation of Celebrity Cruises, Inc. and Zenith Shipping Corp. Royal Caribbean Cruises, Ltd. has no parent corporation and no publicly held company owns ten percent or more of its stock. Apollo Ship Chandlers, Inc. has no parent company and no publicly held company owns ten percent or more of its stock. Celebrity Catering Services Partnership has no parent corporation and no publicly held company owns ten percent or more of an interest.

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## PETITION FOR A WRIT OF CERTIORARI

Petitioners Celebrity Cruises, Inc., Zenith Shipping Corp., Apollo Ship Chandlers, Inc. and Celebrity Catering Services Partnership respectfully pray that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Eleventh Circuit in this case.

## OPINIONS BELOW

The opinion of the court of appeals (Pet. App. 1a-54a) is reported at 394 F.3d 891 (11th Cir. 2004). The pre-trial opinion of the United States District Court for the Southern District of Florida addressing the standard of care (Pet. App. 55a-73a) is reported at 145 F. Supp. 2d 1337. The district court's post-verdict opinion (Pet. App. 74a-87a) is reported at 287 F. Supp. 2d 1321.

## JURISDICTION

The district court had jurisdiction pursuant to 28 U.S.C. §§ 1332 and 1333. The court of appeals had jurisdiction to review the final judgment of the district court pursuant to 28 U.S.C. § 1291. The judgment of the court of appeals was entered on December 22, 2004. A timely petition for rehearing was denied on February 22, 2005. Pet. App. 89a. On May 10, 2005, Justice Kennedy extended the time to file a petition for a writ of certiorari to and including June 22, 2005. *See* Application No. 04A955. On June 9, 2005, Justice Kennedy further extended the time to file the petition to and including July 22, 2005. *Id.* The jurisdiction of this Court rests on 28 U.S.C. § 1254(1).

## CONSTITUTIONAL PROVISION INVOLVED

Article III, § 2 of the United States Constitution provides that the federal judicial power shall extend "to all Cases of admiralty and maritime Jurisdiction . . . ."

## STATEMENT OF THE CASE

This case arises from a sexual assault allegedly suffered by respondent Jane Doe in Bermuda, while she was ashore with a crew member during a Caribbean cruise. Respondent contended, and the trial court agreed, that under federal maritime law common carriers, including cruise lines, are strictly liable for the intentional torts of crew members, even when such torts are clearly committed outside of the scope of employment. Following a jury trial in which the jury was so instructed, respondent was awarded $1 million.

1. In 1999, respondent purchased a round trip ticket for passage on the M/V ZENITH for a seven-day cruise from New York City to Bermuda. Doe boarded the ship on July 17, 1999, and it departed that day, arriving at Hamilton, Bermuda two days later. Doe and her friends disembarked the ship on the evening of July 19 and went ashore at Hamilton. In the early morning hours of July 20, Doe, along with her friends, attended a local nightclub called the Oasis, where they encountered certain M/V ZENITH crew members, including dining room waiter Baris Aydin. It is undisputed that Aydin was off-duty at the time.

Doe was admittedly intoxicated when she left the Oasis at about 3:30 a.m. She wished to use the restroom and Aydin volunteered to help her find one. The parties disputed at trial what occurred next. According to Doe, Aydin led her to a secluded park where he made uninvited sexual advances toward her. Doe testified that when she rejected Aydin's advances and asked to be taken back to her friends, Aydin had forcible, unconsented sexual contact and intercourse with her. According to Aydin's trial testimony, he and Doe went together to a grassy, public park where she removed part of her clothing and urinated. Doe and Aydin then began to kiss and eventually engaged in sexual intercourse. Aydin testified that Doe fully consented to all sexual activities between them.

Doe and Aydin walked together back to the M/V ZENITH where Doe spoke to one of her friends, who decided to report the incident to the ship's personnel as a rape. The ship performed a medical examination of Doe and contacted the Bermuda police. The police investigated the incident, took witness statements from Doe and various crew members and arrested Aydin. A Magistrate's hearing was subsequently held in which Doe testified under oath. Aydin was later released and all charges against him were dismissed after the Honorable Archibald Warner, Magistrate Judge for the criminal court in Bermuda and current Chief Judge, concluded Doe's testimony was, "Wholly and strikingly inconsistent with an allegation of sexual assault. It is self-contradicting and out of reason and all common sense . . . the complainant's evidence is weak and tenuous and [the Court] need not pretend to believe arrant nonsense."

2. Respondent Doe brought the present action to recover damages for alleged sexual assault and battery arising from the same incident in the public park in Bermuda. Jurisdiction was invoked under both 28 U.S.C. §§1332 and 1333. Doe urged that all petitioners were vicariously liable, without fault, for Aydin's alleged misconduct.[1]

Petitioners moved to dismiss Doe's claims on the ground, *inter alia*, that petitioners could not be held strictly liable for Aydin's off-duty conduct, because *Kermarec v. Compagnie Generale Transatlantique*, 358 U.S. 625 (1959),

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[1] The petitioners named as defendants in Doe's operative complaint were Celebrity Cruises, Inc., the operator of the M/V ZENITH; Zenith Shipping Corporation, the ship's owner; Celebrity Catering Services Partnership, the catering company that employs individuals in the food and beverage departments of Celebrity Cruises' vessels; Apollo Ship Chandlers Corporation, a provider of services to Celebrity Catering, and Aydin. Doe never served a summons or complaint upon Aydin.

establishes that cruise ship operators owe passengers only a duty of "care which is reasonable under the circumstances." Petitioners contended that a rule of absolute liability was especially inappropriate when the alleged intentional tort occurred off the vessel, and the alleged assailant was off-duty and not acting within the course and scope of his duties or in furtherance of any business purpose. Pet. App. 4a, 60a, 64a.

The district court acknowledged that "[t]he circuits are split" on whether "ship owners should be held strictly liable for their employees' misconduct," and it noted that "the Second Circuit has interpreted *Kermarec* broadly enough to eliminate vicarious liability for a crew member's intentional torts." Pet. App. 60a-61a. The court nonetheless concluded that, in light of this Court's decisions in *New Jersey Steamboat Co. v. Brockett*, 121 U.S. 637 (1887), and *New Orleans & N.E.R. Co. v. Jopes*, 142 U.S. 18 (1891), absolute vicarious liability is the applicable standard in any case involving an employee's intentional misconduct against a passenger, even when outside the scope of employment and off the ship, so long as the wrongdoing preceded termination of the contract of carriage. Pet. App. 60a-68a.

The case was reassigned to a different judge for trial. Two counts—one for sexual assault and another for battery—were tried before a jury on a strict vicarious liability theory.[2] The jury found that Aydin did not sexually assault Doe, but nonetheless concluded that he had committed sexual battery. The jury awarded Doe $1,000,000 in damages, and apportioned 25% of the damages to each petitioner.

Petitioners timely filed post-trial motions for judgment as a matter of law, new trial, and remittitur. The court found

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[2] Doe's claim for breach of contract was dismissed, and the Court granted petitioners' motion for judgment as a matter of law on Doe's claim for intentional infliction of emotional distress.

that it was constrained by the law of the case established by the previous judge's pre-trial determination that strict vicarious liability was the applicable standard. The court nonetheless granted judgment for petitioners under Fed. R. Civ. P. 50(b), because it found no evidence that any defendant was *both* a common carrier *and* Aydin's employer. Pet. App. 85a.

3. The Eleventh Circuit reversed the entry of judgment in petitioners' favor and reinstated the jury's verdict. The court of appeals first concluded that the district court erred in basing its grant of the Rule 50(b) motion on a ground that had not been raised by the defendants before the case was submitted to the jury.[3]

The court of appeals then turned to the question of the appropriate standard of liability. The court found "only three Supreme Court decisions that bear on the issue," *Brockett*, *Jopes*, and *Kermarec*, *supra*. Pet. App. 25a. The court concluded that the two nineteenth century cases, *Brockett* and *Jopes*, together established the proposition that a common carrier owes its passengers a duty of absolute protection from its crew members. Pet. App. 25a-30a. The Eleventh Circuit court agreed that, under *Kermarec*, "a shipowner owes the duty of exercising reasonable care towards those lawfully aboard the vessel," 358 U.S. at 630, but it believed that, in light of *Jopes* and *Brockett*, *Kermarec*'s rule does not apply to intentional torts committed by crew members against passengers.

The Eleventh Circuit noted that the Ninth Circuit has similarly concluded that *Kermarec* did not overrule the "maritime tort principle that a common carrier owes a duty to protect passengers from assaults by its crew members and is

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[3] Petitioners do not seek review of this aspect of the court of appeals' decision.